

Impact of COVID-19 Pandemic on Reasonable Notice Periods

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One of the factors taken into account when determining the length of an employee's reasonable notice entitlement on termination is the availability of comparable employment.

Courts have taken a variety of approaches when considering whether the notice period should be affected by the state of the economy generally or the parties' own financial situation specifically. Some lower courts have held that economic circumstances may justify a longer notice period if they have made it more difficult to find alternate employment. Conversely, Ontario's Court of Appeal has said that difficulty in securing alternate employment due to general economic conditions should not have the effect of increasing notice periods unreasonably.

Many have been waiting to see how the COVID-19 pandemic would impact reasonable notice periods. Two recent cases from the Ontario Superior Court of Justice address the impact of the pandemic on reasonable notice periods and are likely the first of many decisions to come in the upcoming months.

In [Yee v Hudson's Bay Company](#) ("Yee") the Court held that the pandemic did not increase the length of the notice period. This was in large part because the termination occurred prior to the start of the pandemic, and the Court concluded that the relevant temporal period from which to evaluate the entitlement was at the time of termination. However, the Court in Yee may have left the door open for a different outcome had the employee's termination occurred in the midst of the pandemic.

Facts of the Yee case

Mr. Yee's employment was terminated in August 2019, prior to the start of the pandemic. At the time of termination, Mr. Yee was 62 years of age, had more than 11.5 years of service, and held a managerial executive position as Director, Product Design and Development.

Mr. Yee argued that the pandemic's negative effect on the job market impacted his ability to secure alternate employment, and he asserted a right to a longer reasonable notice period in the circumstances.

In support of this position, Mr. Yee relied on *Paquette v. TeraGo Networks Inc.*, in which the Court held that economic factors indicating that an employee may have difficulty finding reemployment may justify a longer notice period.

However, the Court in *Yee* insisted that comments about economic factors needed to be considered in the context of the Court of Appeal's decision in *Holland v. Hostopia.com Inc.*, which highlighted that "[n]otice is to be determined by the circumstances existing at the time of termination and not by the amount of time that it takes the employee to find employment."

In assessing the circumstances which existed at the time of Mr. Yee's termination, the Court in *Yee* stated that "[i]t seems clear terminations which occurred before the pandemic and its effect on employment opportunities should not attract the same consideration as termination after the beginning of the pandemic and its negative effect on finding comparable employment."

The Court awarded Mr. Yee damages representing 16 months of notice.

Impact of the *Yee* decision

The *Yee* decision indicates that employees terminated prior to the commencement of the pandemic will not necessarily see a lengthier notice entitlement solely due to the impact of the pandemic on job prospects.

Nonetheless, there may be an opportunity for employees terminated during the pandemic to argue that the pandemic warrants a lengthier notice period. It remains to be seen how this issue will be determined.

Further clarity since the *Yee* decision

In [*Iriotakis v. Peninsula Employment Services Limited*](#) ("*Iriotakis*"), the Court considered the impact of the pandemic on reasonable notice periods in the context of an employee whose employment was terminated on March 25, 2020, just one week after the Government of Ontario declared a state of emergency as a result of the pandemic.

The Court ultimately did not give significant weight to the impact of uncertainties in the job market.

Iriotakis thus suggests that the pandemic may also have a limited impact on how courts will evaluate reasonable notice entitlements where a termination took place in the early stages of the pandemic. Indeed, the Court highlighted that "the impact of the pandemic on the economy in general and on the job market, in particular, was highly speculative and uncertain both as to degree and to duration at the time [the employee's] employment was terminated."

Overall

As more of these types of cases come before the courts, we will see the extent of the impact of the pandemic on notice entitlements. For now, employers can take some comfort in knowing that the pandemic will not likely sway the reasonable notice analysis excessively.

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